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THE HISTORY OF CONSPIRACY AND ABUSE OF LEGAL PROCEDURE. By Percy H. Winfield. Cambridge: The University Press. 1921. Pp. xxvii, 219.

This is the first volume of a series to be issued under the general title, Cambridge Studies in English Legal History, edited by Harold D. Hazeltine, Downing Professor of the Laws of England in the University of Cambridge. The series will include two kinds of studies, monographs and editions of texts, this being the first of the monographs. The editor expresses the hope that two volumes a year may be issued.

A reading of the present volume confirms the editor's foreword that the work consolidates the results of years of painstaking, skilful and learned research. No statement in it goes unsupported by careful reference notes, so that a great wealth of original material has been collected and marshalled in the most available form.

The subject is one which carries the reader into unfamiliar fields, for it has never before been carefully investigated; but while many of the forms of abuse of legal procedure which the book discusses are no longer of practical importance, they present a most fascinating and dramatic picture of the long struggle of society to prevent legal institutions from playing into the hands of oppressors. We complain of our courts and their processes as slow, needlessly technical and lacking in operative efficiency, and we often feel that these qualities give wealthy suitors an indirect advantage over others, but we do not observe any widespread tendency on the part of predatory individuals or classes to deliberately employ the machinery of the courts for inflicting unlawful injury or obtaining unlawful advantages. Outside of the highly controversial question of injunctive relief in labor disputes, and barring epidemics of police persecution, the resort to the courts is generally conceded to be legitimate. Purely oppressive use of legal processes is comparatively rare.

But this was not always true, as the book under review amply proves. One is amazed at the panorama which the author presents of conspiracies confederacies, maintenance, false accusations, frivolous and vexatious litigation, champerty, embracery, barratry and malicious arrests. His chief interest is the scope and development of the remedies for these abuses. The great remedy, the writ of conspiracy, he believes did not exist at common law, but originated in the Statute of Conspiritors in 20 and 21 Edward I. It was usually employed in cases of false accusations of crime, but it was sometimes brought "against land-grabbers who would snatch with the law's hands that form of property which then epitomized wealth and power." "The story of what justifies conspiracy in its old sense is the story of a long struggle to solve the legal puzzle of punishing the rogue who would kill and rob with the law's own weapons without at the same time terrifying the honest accuser or plaintiff." "The law at times seems to barricade its windows against light and air, and to leave its doors unlocked to rascals." Eventually the writ, like most of those in the ancient register, became too rigid and gave place to the action on the case in the nature of conspiracy.

Punishment for conspiracy was savagely severe, but "crime was rife in high places." "In 1330 a sweeping provision of the King and Council requires all the sheriffs of England to be removed and not to be received back, and good people and sages of the law to be assigned throughout all England to inquire, hear and determine, at the suit of both King and party, conspiracies, oppressions, grievances and trespasses made between 1 Edward II and 4 Edward III by sheriffs, coroners, constables, bailiffs, hundredors and such other ministers and others." The judgment was that they should not thereafter be put on juries, that their lands, goods and chattels should be seized by the King, that their trees should be uprooted and their bodies imprisoned. Sometimes the punishment was by branding in the face and slitting the nose, and sometimes by loss of ears, pillory, whipping and fine. But the writ of conspiracy was itself perverted, and although it was designed to stop false accusations it became a means for stifling honest ones. The ordinary courts proved inadequate to cope with the evil, and only with the establishment of the Star Chamber was the crime of conspiracy "withered at its root."

Maintenance and champerty are traced through the early records in the same way. Coke believed that they were offenses at common law, but the author doubts this. Statutes began to be enacted in 3 Edward I, and were at first directed against the King's officers on account of the corruption so common among them. Maintainers and barrators became a universal pest, and "king after king tried to extirpate them, but never wholly succeeded." "At one moment the King, his Council and Parliament are giving remedies against these offences. At the next he and they are committing them." "Champerty and maintenance were wide spread over the kingdom, but at times were so virulent in particular districts as to call for special measures." Here again the Star Chamber proved the salvation of the people from the threatened deluge of corruption.

The history of the punishments for these and similar offenses against legal procedure casts a particularly interesting light upon our own problem of punishment for crime. The author points out that "wherever we find in the mediaeval statute-book a batch of exceptionally harsh statutes, we can nearly always infer that there were at that period a feeble or absentee King and a lawless baronage. It is a mark of such times that the punishments for many of the worst crimes against public order are in theory tremendous, and that the laws which fix them are little more than a dead letter owing to the venality or weakness of those charged with their execution." We would show a truer historical understanding if, instead of advocating heavier penalties for crime, we made the administration of the criminal law more swift and sure.

The book is prepared with such conscientious precision that the author seems deliberately to abstain from a natural inclination toward the imaginative and picturesque allusions and side-lights which so often grace the pages of Pollock and Maitland. But while requiring close reading it is by no

means dull, and is undoubtedly a contribution of the highest importance in its field. Such a volume is a positive inspiration to the reader of legal history, who so often has to choose between stupid thoroughness and lively superficiality.

EDSON R. SUNDERLAND.

GOVERNMENTAL CONTROL AND OPERATION OF INDUSTRY IN GREAT BRITAIN AND THE UNITED STATES DURING THE WORLD WAR. By Charles Whiting Baker. Carnegie Endowment for International Peace. New York: Oxford University Press. 1921. Pp. vii, 138.

On the whole, Mr. Baker's book is a defense of the government's control of industry during the war. Perhaps we are not far enough removed from the events to expect an entirely impartial discussion of such a controversial question. Some students, however, have more nearly approximated this desirable end. The tone of the book is generally temperate and the author is not insensible to the faults of government administration, but there is an evident tendency to subordinate these faults. Most fair-minded people will probably agree with the author that, looking at the broad results attained and bearing in mind the immensity of the problems and the urgency of immediate decisions, the records of government administration in Great Britain and the United States were as good as could have been reasonably expected. This is the author's thesis and is as well supported as it could be in the brief space of 138 pages. The reviewer wonders, however, if Mr. Baker has not exaggerated the opposition to his own views in asserting that the conservative middle classes "are well-nigh unanimous in condemnation of the way the government business was carried on." Does not the sentiment shown in the demand for a return of the railroads to private ownership and for the sale of our government-owned merchant marine to private operators merely indicate a belief that the necessities of war-time and wise policy in peace-time call for quite different programs? One feels in reading the book that the author is rather missing the point of the present popular disapproval of government control of business.

The book is valuable as a summary statement of the development and conduct of government control over industry during the war. There is a brief and interesting chapter on the nature of efficiency and on the difficulty of its attainment by a government. The author then proceeds *seriatim* through a discussion of government control of railways, public utilities, shipping, labor, capital, food, and fuel, and concludes with very brief chapters on the extension of government control in peace-time and the conflict between the executive and legislative branches of government. For the general reader, perhaps, the value of the book is enhanced by the omission of many details which would be desired by the more serious student.

For the student who is interested in government administration during this period, not so much for its own sake as for the principles of adminis-